

SALES AND USE TAX REVIEW COMMISSION 2000 ANNUAL REPORT

Annual Report to the New Jersey Legislature
Issued pursuant to N.J.S.A. 54:32B-43

December 31, 2000

John R. Baldwin
Commission Chairman

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(as of December 1, 2000)

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Overview of Authorizing Legislation

The New Jersey Legislature established the Sales and Use Tax Commission through the enactment of Public Law 1999, chapter 416, on January 18, 2000. This authorizing legislation, which is codified as N.J.S.A. 54:32B-37 et seq., became effective March 1, 2000.

Membership:

The Commission may comprise ten members. That membership consists of the following, all of whom serve without compensation, but are entitled to reimbursement of expenses incurred in the performance of their Commission duties.

Four members of the Executive Branch: State Treasurer (or designee), *ex officio*, and three other members of the Executive Branch designated by the Governor to serve at the Governor's pleasure.

Two public members (not of the same political party) appointed by the President of the Senate, serving the two-year legislative term in which the appointment is made and until their successors are appointed and qualified.*

Two public members (not of the same political party) appointed by the Speaker of the General Assembly, serving the two-year legislative term in which the appointment is made and until their successors are appointed and qualified.*

Two public members (not of the same political party) to be appointed by the Governor, with the advice and consent of the Senate, serving four years and until successors are appointed and qualified.*

From among the six "public members" the Governor designates a chairman, who serves at the pleasure of the Governor.

The Commission is entitled to receive assistance and services from employees of any New Jersey state, county or municipal department, board, bureau, commission, or agency as required, and to employ clerical assistants within the limits of funds available to it. The Division of Taxation is required to assist the Commission in performing its duties. The Commission may use the Division's existing studies and materials, and may also request additional services from the Division.

* Of the first members appointed, one is to serve for two years and one is to serve for four years.

Duties of the Commission:

The Commission is charged with the duty to review all bills, and all joint or concurrent resolutions, originating in either the General Assembly or the Senate of the State Legislature, which would either expand or reduce the base of the sales and use tax. Its review must, at a minimum, include an analysis of the bill's or resolution's impact, comments or recommendations concerning the bill or resolution, and any alternatives to it which the Commission may wish to suggest.

Procedures:

The following requirements govern the Commission's review process.

(1) First, within 20 days of the introduction of any bill or resolution, the Legislative Budget and Finance Officer must determine whether enactment of the measure would effect an expansion or reduction of the sales and use tax base.

(2) If the officer determines that the measure expands or reduces the tax base, he must then promptly notify the Commission, the presiding officer of the house in which the bill or resolution was introduced, and the chairman of any standing committee of that house to which the bill or resolution may have been referred.

(3) When the Commission receives a bill or resolution for review, it should complete its review and issue its written comments and recommendations within 90 days after the measure's introduction in the Legislature, unless it has been granted an extension. Its comments and recommendations must be provided to the presiding officer of the introducing house and the chairman of the standing committee handling the measure within 90 days after the bill's or resolution's introduction, unless an extension has been granted.

(4) The General Assembly or Senate, or the standing committee handling the bill or resolution, may not vote on it until after the Commission completes its review and provides its comments and recommendations, unless the Commission fails to do so by the deadline described in paragraph (3), in which case the Legislature is free to take action.

(5) However, if the presiding officer of the introducing house notifies the Commission and the standing committee that the bill or resolution is an urgent matter, the house or standing committee is permitted to vote on the bill or resolution without waiting for the Commission's comment.

The Commission may meet and hold hearings, may request the assistance of officials of State agencies or of political subdivisions of the State, and may solicit the testimony of the interested group and the general public.

Rules and Regulations:

The Commission may adopt rules and regulations that it deems necessary in order to carry out its functions. The Administrative Procedure Act applies. N.J.S.A. 52:14B-1 et seq.

Commission Report:

The Commission must report its activities by December 31 of each year, and it may also issue periodic tax policy recommendations.

This annual report is being issued in accordance with this requirement imposed by N.J.S.A. 54:32B-43.

Standards of Analysis for Review of Sales And Use Tax Legislation

The sales and use tax makes up approximately one third of New Jersey's tax revenue. It is the major source of revenue for general (not "dedicated") State purposes.

Following are the total figures for sales and use tax collections in the past three fiscal years:

Fiscal Year	Sales and Use Tax Collections
1999	\$5,054,437,769
1998	4,766,194,660
1997	4,415,427,600

The magnitude of these figures may suggest how important it is to ensure the continued efficacy of the sales and use tax as a means of funding State purposes, while ensuring that the tax also remains fair and results in minimal interference with the public's economic decision making.

In order to expedite the work of reviewing pending sales and use tax legislative proposals and arriving at recommendations, it can be helpful to identify some standards that might be useful when evaluating the merits of legislation that would alter the sales and use tax base. It may be necessary to give due attention to the sometimes competing visions and values of "fairness," ease of administration, economic neutrality, and compliance cost. While analysis of legislation is generally not limited to the consideration of a fixed, precisely defined list of standards, it can be useful to consider, among other factors, the following standards when performing an analysis of each bill presented for review.

Simplicity:

Sales and use tax statutes should be plain, clear, precise and unambiguous in order to permit both accurate compliance by the public and fair, nonarbitrary enforcement by State tax administrators.

Equity:

In this area, the policy analyst faces the challenge of applying two competing concepts of fairness, both of which may merit some consideration.

"Horizontal equity" requires that the tax apply equally to similarly situated taxpayers. That is, all taxpayers engaging in the same type of transaction are deemed to be "equals" and therefore should be equally obligated to pay tax at the same rate, resulting in tax payments proportionate to the monetary value of the transactions. Proponents of "horizontal equity" as a guiding principle of ideal statutory tax

schemes generally favor sales tax laws with the broadest possible tax base, with few if any exclusions or exemptions, coupled with the lowest possible rate of tax.

“Vertical equity” requires that the burden of paying the tax be assigned according to the taxpayer’s ability to pay. This vision of equity is based on the recognition that paying the same dollar of tax requires a greater proportionate sacrifice for the person of very limited means than it does for the person of wealth. The vertical equity vision is generally implemented through personal income tax schemes, imposing tax at progressively higher rates in accordance with income. It is generally not a guiding principle of sales tax schemes.

However, in the context of consumption taxes, such as the sales and use tax, some degree of vertical equity is indirectly achieved by means of exemptions and exclusions for “necessities” such as food, medicines, and home heating repairs that are so crucial to subsistence living that the poor cannot safely choose to forgo the purchases. However, while the exemptions for necessities result in the nontaxability of a greater percentage of the poor’s purchases than of the wealthy’s purchases, they also promote “horizontal equity,” since the exemptions apply without regard to the taxpayer’s real or assumed ability to pay. Therefore, exemptions for “necessities” can be acceptable to proponents of both competing concepts of equity.

Economic Neutrality:

Sales tax policy analysts generally advocate that sales tax legislation should be economically neutral to the extent possible. That is, any exemptions and exclusions in the law should ideally have minimal effect on the free functioning of the State’s market economy. The concept of economic neutrality is of course closely related to the “horizontal equity” vision of tax burden fairness. The tax should be sufficiently broad-based, and its rate sufficiently low, that a transaction’s taxability need not become a significant factor affecting consumers’ economic decisions.

If sales taxes are viewed as simply and fundamentally a means of raising revenue for the support of government services and programs, it is then arguable that they should not be used as a social and political policy tool, by favoring “desirable” activities with exemptions or by penalizing “undesirable” activities through the imposition of higher rates of tax. In addition, they should generally avoid favoring one segment of the economy over another competing segment.

Costs of Administration and Compliance:

The State’s cost of administering the tax, and the costs incurred by vendors and consumers in complying with it, should be as low as possible, consistent with the objective of ensuring that the proper amount of tax is paid and remitted on the proper transactions.

Tax Expenditures

The identification of “tax expenditures” is based on the notion that *not* taxing something is equivalent to government spending, in its impact on state funds. The scope and fiscal impact of tax expenditures are an important consideration in the analysis of bills that would provide exemptions, exclusions or preferential rates for sales and use tax. The concept of “tax expenditures” or “tax preferences” recognizes that in some circumstances, when legislation carves out an exception to the taxability of a particular category of transaction, or when it allows a preferential rate for certain vendors or taxpayers, it is in effect causing the state to expend part of its budget on the statutorily favored transaction. That is, because the exemption provision requires the state to relinquish its right to collect tax on the exempt, excluded, or reduced-rate transaction, the loss of this otherwise collectible revenue might be viewed as comparable to the expenditure of the same amount of revenue, had the tax base not been narrowed by the preferential provisions.

However, unlike in the normal situation in which a legislature spends through appropriations, the indirect “spending” resulting from tax preference legislation does not have the inherent flexibility needed to respond to changing social and economic conditions. Once the preferential legislation is enacted and becomes operative, the amount of spending it effects is not reviewed annually, as a normal budget appropriation would be. The legislative body thus loses its capacity to direct its expenditure in a timely and politically sensitive way to the public’s specific, changing needs. The amount of the “expenditure” becomes controlled by market conditions, and it is beyond the control of the legislature once the preferential statute is in effect, unless the statute is amended or repealed. Thus, the preferential reduction of the tax base operates somewhat like an “entitlement” program, in which public funds are spent on anyone satisfying the eligibility criteria. Or, alternatively, it might be viewed as “dedicating” revenue to the parties engaged in the statutorily preferred exempt or excluded transaction. For these reasons, a thorough fiscal analysis of sales and use tax legislation reducing the tax base will generally include an estimate of the imputed value of the tax expenditure expected to result from any preferential exemptions, exclusions or rate reductions.

An example of a tax expenditure in New Jersey is the reduced sales tax rate applicable to certain sales by qualified urban enterprise zone businesses. This preferential rate indirectly subsidizes the zone businesses. In its effect on the public fisc, it is comparable to the State’s appropriating the same amount out of public revenues in order to subsidize these businesses directly. The estimated net loss for fiscal year 2001 resulting from the urban enterprise program is \$251,546,000. This figure includes \$81,247,000 lost because of the reduced (3%) rate collections, another \$81,247,000 lost because the collected amounts are dedicated to the zones and will not become part of the general State fund, and \$89,052,000 lost because of tax-exempt purchases made by qualified zone businesses. In addition, available statistics for the past six fiscal years show that the losses to the general fund from

the reduced rate collections and dedication alone were \$59,114,000 in FY 1995, \$96,526,000 in FY 1996, \$112,398,000 in FY 1997, \$123,822,000 in FY 1998, \$143,814,000 in FY 1999, and \$153,296,000 in FY 2000, amounting to a total of \$688,970,000 for the six-year period. This figure does not include the losses resulting from the sales tax exemption allowed for purchases by qualified urban enterprise zone businesses, for which statistics are not currently available.

List of Bills Reviewed by Commission (up to December 1, 2000)

Bill Number	Description	Recommendation Date
A-2182 (S-1104)	Provides an exemption from sales and use tax on purchases of home improvement materials used for repairs, improvements or both for an approved retrofitting to a residential property located in a coastal area and insured under a homeowner's policy.	6/1/00
A-2214 (S-633)	Provides a sales tax exemption for sales of food and drink, admission or amusement charges collected by county and municipal governments under certain circumstances.	6/1/00
A-2217	This bill provides an exemption from sales and use tax for purchases of energy and utility service by a county or any agency thereof.	7/10/00
A-2222 (S-1317)	Exempts sales of certain platinum fixtures and options and certain coins, collectibles, ingots and paper money from sales tax.	6/1/00
A-2366 (S-1261)	These bills provide an exemption for the sale of a limousine to a licensed New Jersey operator and for the sale of parts and labor to any licensed limousine service operator.	7/10/00
A-2381 (S-1234)	Exempts sales of certain effluent treatment equipment from the Sales and Use Tax Act.	7/26/00
A-2416	This bill would impose a wholesale tax on alcoholic beverages and exempt the sales of alcoholic beverages from the New Jersey sales and use tax.	8/4/00
A-2712	The bill authorizes the creation of a new UEZ in Roselle Borough, Union County	10/13/00
S-1303	This bill provides for a sales tax exemption for maintenance services on residential septic systems.	7/10/00
S-1345	This bill imposes a sales tax surcharge on sales of electricity that violate maximum allowable air pollution levels established by the Department of Environmental Protection in consultation with the Board of Public Utilities.	8/11/00

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C.416

Bill Number: A-2182

Date of Introduction: 3/3/00

Sponsor: Assemblyman Asselta
Assemblyman Corodemus

Date of Recommendation: 6/1/00

Identical Bill: S-1104

Sponsor: Senator Connors
Senator Kyrillos

Committee: Assembly Commerce, Tourism, Gaming and
Military and Veterans' Affairs
Senate Commerce

Description

These bills provide an exemption from sales and use tax on purchases of home improvement materials used for repairs, improvements, or both, for an approved retrofitting to a residential property located in a coastal area and insured under a homeowner's policy.

Analysis

The exemption from tax provided by these bills does not treat similarly situated taxpayers alike. The bills will provide a tax benefit for certain natural hazards such as flooding in a coastal area, while the identical calamity elsewhere is not so recognized. There is no evidence that a tax exemption incentive will promote retrofitting or that it could be administered in a reasonable way so as to prevent improvements that have significant utility or add substantial property value apart from the goal of retrofitting. The exemption does not meet the test of simplicity. The proposed statute, as written, requires complicated rules, guidelines, and procedures for implementation that could result in taxpayer confusion and uncertainty.

Recommendation

The Sales and Use Tax Review Commission does not recommend either of these bills for enactment.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining:** 0

Commission Meeting Date: 5/15/00

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

Bill Number: A-2214

Date of Introduction: 3/20/00

Sponsor: Assemblyman Biondi
Assemblyman Augustine

Date of Recommendation: 6/1/00

Identical Bill: S-633

Sponsor: Senator Matheussen

Committee: Assembly Local Government
Senate Budget and Appropriations

Description

These bills provide a sales tax exemption for sales of food and drink, admission or amusement charges collected by county and municipal governments under certain circumstances.

Analysis

The provisions of these bills will not result in increased sales tax simplicity. As drafted, the bills would provide an exemption for sales of food and admissions; however, sales of tangible personal property would remain taxable. Thus, a customer would not be required to pay tax on the purchase of a hot dog and soda but would pay tax on the purchase of a team banner or key chain. Since county or municipal government instrumentalities are still required to collect and remit tax on property sales, these bills do not result in reduced compliance costs for such sellers. Sales tax must still be accounted for and remitted periodically on sales that are not exempt under the bills.

Also, other nongovernmental vendors of food and drink and admissions are not exempt from the tax, including exempt organizations. For example, the sale of admissions to a professional or college football or basketball game would remain subject to sales tax in this State. Finally, enactment of either bill could result in privately owned businesses, such as food concessions or minor league baseball clubs, through the device of agency, having a significant competitive advantage in the market place. Businesses unable to obtain contracts with the government owners of covered facilities would still have to comply with the provisions of the Sales and Use Tax Act with respect to sales of food and admissions.

Recommendation

The Sales and Use Tax Review Commission does not recommend enactment of either of these bills.

Commission Members **For** Proposal: 0
Commission Members **Against** Proposal: 6
Commission Members **Abstaining**: 0
Commission Meeting Date: 5/15/00

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

Bill Number: A-2217

Date of Introduction: 3/20/00

Sponsor: Assemblyman Weingarten
Assemblyman O'Toole

Date of Recommendation: 7/10/00

Identical Bill: None

Committee: Assembly Telecommunications & Utilities

Description

This bill provides an exemption from sales and use tax for purchases of energy and utility service by a county or any agency thereof.

Analysis

The sales and use tax imposed on gas, electricity, and utility service was enacted to replace the repealed Gross Receipts and Franchise Tax (GRFT). See P.L. 1997, c.162. There were no exemptions in the GRFT for county government agencies and the tax was passed along as a part of the rate paid for the service. The percentage of GRFT included in a utility bill paid by county governments was approximately 13%.

In order to save harmless the revenue that was received by the State under GRFT, the sales and use tax base under the Energy Tax Reform Act intentionally included state, county and local government entities as well as nonprofit exempt organizations. Currently, the only governmental entity that is not subject to the sales tax on gas, electricity, and utility services is the federal government.

Since the sales tax revenue derived from taxable utility service is dedicated to municipal aid, any erosion of the tax base could have a significant Statewide impact.

It is difficult to justify relieving one category of state government from a tax burden while enforcing the tax against other levels of government. From a business standpoint, uniformity in tax treatment among all levels of government entities relieves the administrative burden of determining whether such entities fall within the exemption provision and obtaining the proper documentation. In addition, should an exemption be enacted, it can then be argued that private nonprofit, exclusively religious, educational, or charitable organizations should also receive the same exemption in recognition and support of the work they do that reduces the burden of state government.

Recommendation

The Sales and Use Tax Review Commission does not recommend the bill for enactment.

Commission Members **For** Proposal: 0
Commission Members **Against** Proposal: 5
Commission Members **Abstaining**: 0
Commission Meeting Date: 6/13/00

SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

Bill Number: A-2222

Date of Introduction: 3/20/00

Sponsor: Assemblyman Arnone
Assemblyman Bateman

Date of Recommendation: 6/1/00

Identical Bill: S-1317

Sponsor: Senator Littell

Committee: Assembly Banking and Insurance
Senate Commerce

Description

These bills would exempt sales of certain platinum fixtures and options and certain coins, collectibles, ingots, and paper money from sales tax.

Analysis

These bills exempt from tax a portion of the collectibles economy, with no policy reason appearing for preferring that portion over another. For example, stamps, paintings and valuable antiques are not granted exemption. These bills exempt from tax luxury transactions, thus putting in the sales tax law a regressive provision. Collectibles are not necessities. Exempting them from tax does not reduce the burden of the tax, in the aggregate, on that part of the population least able to pay it. There is no demonstrated need to subsidize the collectibles industry that would justify either bill's adverse impact on notions of equity. These bills lack simplicity in that they use certain terms without defining them, such as "investment coins" and "bullion," which will cause taxpayer confusion and create needless litigation over terms that should be defined in the legislation for clarity. Also, the bills are designed to subsidize a part of the collectibles market by making it less costly to make purchases therein as opposed to other types of markets without any apparent benefit to the citizens of this State as a whole or its economy.

Recommendation

The Sales and Use Tax Review Commission does not recommend either of these bills for enactment.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **For Abstaining:** 0

Commission Meeting Date: 5/15/00

SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

Bill Number: A-2366

Date of Introduction: 5/8/00

Sponsor: Assemblyman LeFevre

Date of Recommendation: 7/10/00

Identical Bill: S-1261

Sponsor: Senator Bennett

Committee: Assembly Commerce, Tourism, Gaming and
Military and Veterans' Affairs
Senate Budget and Appropriations

Description

These bills provide an exemption for the sale of a limousine to a licensed New Jersey operator and for the sale of parts and labor to any licensed limousine service operator.

Analysis

The bills are intended to restore an exemption last granted to limousine sales in 1990 as commercial motor vehicles operated under a certificate or permit issued by the Interstate Commerce Commission. See N.J.S.A. 54:32B-8.31 (Repealed by P.L. 1990, c.40). The language in these bills is broader than both the previous exemption and the current exemption for sales of certain commercial motor vehicles, N.J.S.A. 54:32B-8.43, by allowing an additional tax benefit for labor charges, which is not available to other types of commercial motor vehicles. Thus, the bill does not treat similarly situated taxpayers in the same manner. In addition, businesses that may compete with limousine companies, such as taxicabs and airport or hotel van services, do not have an exemption for purchases of vehicles, parts or labor.

The proposed statute could raise Commerce Clause concerns in that it treats New Jersey-licensed limousine service operators more favorably than out-of-State limousine service operators by excluding the latter from a vehicle purchase exemption under its terms. Also, by distinguishing between New Jersey limousine operators and out-of-State operators, the bills lack administrative simplicity because vendors will be required to ascertain state licensing information from purchasers as part of their obligation to accept exemption certificates in good faith.

There is nothing in the bills that prevents the extension of the exemption in unintended ways. For example, the purchase of regular sedan type or minivan passenger vehicles is clearly exempt by the amendment. Thus, it is possible and likely that such motor vehicles will be purchased either by new or current limousine service licensees, who, for competitive or other reasons, suspend or cease business operations after purchase. The vehicles these licensees purchased tax-free for use in a limousine service could then be converted to personal use without any liability for the sales tax other residents of New Jersey must pay with respect to the use of private passenger vehicles in this State.

Recommendation

The Sales and Use Tax Review Commission does not recommend either of these bills for enactment.

Commission Members For Proposal:	0
Commission Members Against Proposal:	5
Commission Members Abstaining :	0
Commission Meeting Date:	6/13/00

SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

Bill Number: A-2381

Date of Introduction: 5/8/00

Sponsor: Assemblyman Bagger
Assemblyman Wisniewski

Date of Recommendation: 7/26/00

Identical Bill: S-1234

Sponsor: Senator Singer

Committee: Assembly Appropriations

Description

Exempts sales of certain effluent treatment equipment from the Sales and Use Tax Act.

Analysis

The bills would provide an exemption from sales and use tax for the purchase or use of certain wastewater treatment equipment. Exemptions from broad-based taxation are not generally favored because they can and often do affect the certainty of tax application, the simplicity or coherence of a tax scheme, the costs of administration or compliance, and widely-held notions of tax neutrality and equity. There may be times, however, when the anticipated and overarching public benefit from a tax exemption is compelling enough to warrant favorable consideration of such special treatment. That may be the case here. It is anticipated that the exemption granted by these bills could promote the conservation of potable water by reducing the demand of certain industrial users; reduce water pollution by encouraging the further and improved treatment of wastewater/effluent and its reuse by the same industrial user; reduce the operating cost of water by companies in New Jersey that rely on large quantities of water for processing or production; and, reduce the risk of the adverse operating effects of water restrictions on industrial users that install such equipment.

Recommendation

The Sales and Use Tax Review Commission recommends both of these bills for enactment.

Commission Members **For** Proposal: 3

Commission Members **Against** Proposal: 2

Commission Members **Abstaining:** 0

Commission Meeting Date: 7/26/00

SALES AND USE TAX REVIEW COMMISSION RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

Bill Number: A-2416

Date of Introduction: 5/11/00

Sponsor: Assemblyman Doria

Date of Recommendation: 8/4/00

Identical Bill: None

Committee: Assembly Law and Public Safety

Description

This bill would impose a wholesale tax on alcoholic beverages and exempt the sales of alcoholic beverages from the New Jersey sales and use tax.

Analysis

This bill would impose an alcoholic beverage wholesale sales tax on receipts from the sale of alcoholic beverages to retail licensees. This would reinstate a tax that was in effect in 1990 but repealed at that time in favor of imposing sales tax on sales of alcoholic beverages at the retail level.

There is a concern about the breadth of a wholesale tax vis à vis tax burden. In order to have relatively low rates of excise taxation, a tax must have a broad base. If the base is severely restricted, as it would be in this situation, much higher rates of taxation are necessary if revenue neutrality is to be maintained. It is true that the wholesale tax would be passed along to consumers who would no longer pay a sales tax on their purchases. However, it is also true that the wholesale tax would result in higher retail prices. That would depress consumption while at the same time increase the retailer's cost of doing business. Thus, shifting the tax to be wholesale level could have more than a minimal effect on the alcoholic beverage sector of the State's economy. Possible consequences include shifts in consumption and distribution of goods and restrictions on economic growth in the industry.

Recommendation

The Sales and Use Tax Review Commission does not recommend this bill for enactment.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 5

Commission Members **Abstaining**: 1

Commission Meeting Date: 7/26/00

SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

Bill Number: A-2712

Date of Introduction: 7/13/00

Sponsor: Assemblyman Cohen
Assemblyman Impreveduto

Date of Recommendation: 10/13/00

Identical Bill: None

Committee: Assembly Commerce, Tourism, Gaming and
Military and Veterans' Affairs

Description

The bill authorizes the creation of a new UEZ in Roselle Borough, Union County.

Analysis

In 1983, the Legislature enacted the New Jersey Urban Enterprise Zone Act to help revitalize the State's economically distressed urban areas. N.J.S.A. 52:27H-60 et seq. The Act was meant to provide a framework for encouraging private capital investment and job creation in these selected urban areas. There were originally 10 designated zones, which was increased to 20 zones in 1993 and 27 in 1996. The main benefits made available to qualified businesses in an urban enterprise zone are twofold: a sales tax exemption on most purchases of goods and services for use at the zone business (intended to attract relocation/expansion of business into the zone) and a reduced sales tax rate of 3% on sales of goods from the zone business (intended to attract shoppers into the zone). This bill would increase the number of enterprise zones to 28.

The validity of granting an ongoing government subsidy that favors particular municipalities at the expense of all other municipalities has to be questioned. The Bill Statement refers to the negative economic impact on Roselle due to the bordering enterprise zone of Elizabeth. However, there is no indication that granting Roselle zone status would reverse its decline or attract new business to the area. Moreover, if zone status did attract substantial business investment, it is probable that part of the new business growth would result in a commensurate loss of economic development in Elizabeth and other surrounding towns. As the Bill Statement mentions, this has already happened, thereby providing the impetus to create a new zone in Roselle. There is no reason to believe that it will not continue in the future, town by town.

A perpetual cycle of economic cannibalization is inevitable when government creates a favorable tax situation in multiple districts scattered throughout a densely populated state such as New Jersey. Assuming a somewhat inelastic level of routine retail purchases, the greater the number of zones, the greater the negative effect of simply shifting economic growth from one municipality to another. The result must be a gradual but steady dilution of the economic benefits that served as the foundation of the 1983 Act. More zones will translate into less real benefit for each authorized zone. Although zones in the aggregate may show an increase in employment and business activity, it is likely that such increases are at the expense of the other municipalities of the State. It is also possible that some of the increases would have occurred regardless of the zone incentives.

There is a strong indication that the reduced sales tax rate benefit is not what drives the Urban Enterprise Zone program. Most people will shop where it is convenient, although the infrequent big-ticket purchases may be a reason to travel to a lower sales tax area. The reduced tax rate incentive creates severe administrative problems for zone vendors as well as marketplace competitive disadvantages for non-zone vendors. It also exposes the State to Commerce Clause challenges because the use tax rate in the zones must be equal to the 3% sales tax rate, while the general use tax rate in the State is 6%. Once the use tax rate is established at 3%, the State will eventually face a huge revenue loss from the purchase of goods from vendors outside of New Jersey (e.g. mail order, Internet sellers, wholesalers and distributors) and delivered to the purchaser within a reduced rate zone. In effect, the State will have created a de facto "enterprise zone" reduced tax rate for all businesses located everywhere, except those located in non-zone areas of New Jersey, where the use tax rate remains 6%. The negative implications for in-State non-zone businesses could be devastating.

Although the tax exemption on business purchases for use or consumption within a zone is a valuable incentive, not unlike others that currently exist in the sales tax law, for many of the large businesses moving into the zones, it is merely the "icing on the cake", the cake being the myriad of benefits that are completely unrelated to the zone program; for example, New Jersey's transportation and communication infrastructure, lower rents and operating costs, proximity to major markets, availability of labor pool, property tax incentives, low rate financing, etc.

As a matter of public policy, the expansion of the Urban Enterprise Zone program as it currently exists should not be encouraged. The Fiscal Impact Study conducted in 1998 for the Urban Enterprise Zone Authority by Response Analysis Corporation and Urbanomics supports the position that additional zones should not be designated until performance standards and minimum cost/benefit ratios are put into place for the entire program (Final Report, Section 1.5.4). To date, this has not

been accomplished. Until this is done, there should be no consideration of further expansion of enterprise zones in New Jersey. In addition, consideration should be given to amending the provisions regarding the reduced rate benefit in order to diminish or eliminate its potentially adverse impact on in-State business activity and sales tax revenue.

Recommendation

The Commission does not recommend enactment of this bill.

Commission Members **For** Proposal: 0
Commission Members **Against** Proposal: 5
Commission Members **Abstaining:** 0
Commission Meeting Date: 10/10/00

SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

Bill Number: S-1303

Date of Introduction: 5/18/00

Sponsor: Senator Singer

Date of Recommendation: 7/10/00

Identical Bill: None

Committee: Senate Environment

Description

This bill provides for a sales tax exemption for maintenance services on residential septic systems.

Analysis

The bill exempts pumping out residential septic systems, a service which is performed infrequently (once every several years) on household septic systems in this State. The sales tax cost per household is an insignificant financial burden that must be compared with the aggregate impact on State revenue if the exemption were enacted. The proposed exemption will not affect economic decisions because homeowners know whether the property is connected to a public sewer system at the time the property is purchased. Responsibility for proper maintenance of the septic system is thus accepted by the homeowner.

Recommendations

The Sales and Use Tax Review Commission does not recommend the bill for enactment.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 5

Commission Members **Abstaining:** 0

Commission Meeting Date: 6/13/00

SALES AND USE TAX REVIEW COMMISSION RECOMMENDATION PURSUANT TO P.L. 1999, C.

Bill Number: S-1345

Date of Introduction: 5/22/00

Sponsor: Senator Bassano

Date of Recommendation: 8/11/00

Identical Bill: None

Committee: Senate Economic Growth, Agriculture and Tourism

Description

This bill imposes a sales tax surcharge on sales of electricity that violate maximum allowable air pollution levels established by the Department of Environmental Protection in consultation with the Board of Public Utilities.

Analysis

Although the bill appears to impose the additional 3% tax on the sale of electricity generated either in-State or out-of-State and sold to a customer in New Jersey, nonetheless it is clear that the focus of the surcharge is on electricity generated in other states which may have less strict air pollution standards. Since it must be assumed that all electricity generated in New Jersey meets New Jersey's air pollution standards, the bill would be challenged on the ground that it results in an unconstitutional interference with interstate commerce by discriminating against the purchase of out-of-State electricity. Under the bill, it is much more likely that a customer will be required to pay 9% tax if electricity is purchased from an out-of-State generator, rather than an in-State company which is already subject to New Jersey's environmental standards. It is also questionable whether the tax law should be used to increase the price of electricity for New Jersey customers who choose an out-of-State supplier as this is contrary to the purpose of other laws mandating energy deregulation and consumer choice.

Recommendations

The Sales and Use Tax Commission does not recommend this bill for enactment.

Commission Members **For** Proposal: 0

Commission Members **Against** Proposal: 6

Commission Members **Abstaining:** 0

Commission Meeting Date: 7/26/00

